

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Anne Marie Razza et al.
Application No.: 10/687,366
Filed: October 15, 2003
Title: METHOD AND SYSTEM FOR SEARCHING FOR TRAVEL
ITINERARIES WITH FLEXIBLE TRAVEL DATES
Examiner: Tonya S. Joseph
Art Unit: 3628
Confirmation No. 9270

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APPEAL BRIEF OF APPELLANT

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I. Real Party in Interest

The real party in interest is Orbitz LLC, the assignee of record, which is a subsidiary of Orbitz, Inc., which is a subsidiary of Orbitz Worldwide, LLC, which is a subsidiary of Orbitz Worldwide, Inc.

II. Related Appeals and Interferences

Appellant is not aware of any other appeals or interferences that would directly affect or have a bearing on the decision in this appeal.

III. Status of the Claims

This application contains claims 1-9, 11-30, and 32-41. Claims 10 and 31 were previously cancelled during prosecution and claims 21-28 were withdrawn from consideration. Therefore, claims 1-9, 11-20, 29-30, and 32-41 are currently under examination in this application, all of which were finally rejected in an Office Action dated January 19, 2010 (hereafter the "Final Office Action"). No amendments were made to the claims subsequent to the final rejection of claims 1-9, 11-20, 29-30, and 32-41. Appellant hereby appeals the final rejection of claims 1-9, 11-20, 29-30, and 32-41.

IV. Status Of Amendments

No amendments were filed subsequent to the Final Office Action.

V. Summary Of Claimed Subject Matter

A. Independent Claim 1

A computer implemented method of identifying a plurality of alternate travel itineraries¹, the method comprising the steps of:

simultaneously providing a plurality of flexible date search options to a user with a web server², one of the plurality of flexible date search options comprising performing a search based on a user entered trip date interval and a user entered trip length, the user entered trip date interval comprising a user entered departure date and a user entered return date, wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date³;

receiving a search option selection from the user via a network⁴;

requesting travel date information from the user based on the search option selection⁵;

receiving the travel date information from the user via the network⁶;

determining all pairs of departure dates and return dates that satisfy the travel date information with an application server⁷;

1 See Appellant's specification at p. 1, ln. 1 – p. 16, ln. 9, p. 22, lns. 1-8; and Figs. 1-11; *inter alia*.

2 See Appellant's specification at p. 2, lns. 1-6, 13-15, and 19-22; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 2; p. 6, ln. 1 – p. 9, ln. 20; p. 11, ln. 28 – p. 13, ln. 9; p. 14, ln. 1 – p. 15, ln. 5; p. 22, lns. 1-8; and Figs. 1, 3, 6, and 9; *inter alia*.

3 See Appellant's specification at p. 2, lns. 1-6, 13-15, and 19-22; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 7, ln. 2; p. 14, ln. 1 – p. 15, ln. 5; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

4 See Appellant's specification at p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 2; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

5 See Appellant's specification at p. 2, lns. 13-15; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 12, ln. 31 – p. 13, ln. 9; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

6 See Appellant's specification at p. 2, lns. 13-15; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 12, ln. 31 – p. 13, ln. 9; p. 13, ln. 20 – p. 14, ln. 25; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

7 See Appellant's specification at p. 2, lns. 6-9, 15-18, 22-23; p. 3, lns. 5-9; p. 4, ln. 6 – p. 5, ln. 2; p. 8, ln. 5 – p. 9, ln. 20; p. 10, ln. 29 – p. 11, ln. 15; p. 12, ln. 22 – p. 13, ln. 9; p. 13, lns. 20-31; p. 14, ln. 16 – p. 15, ln. 5; p. 15, ln. 24 –

identifying fares for itineraries corresponding to each of the departure date and return date pairs with a search engine⁸; and

displaying the fares on a display⁹.

B. Independent Claim 13

A computer implemented method of searching for travel itineraries comprising the steps of¹⁰:

simultaneously providing a plurality of flexible date search options to a user with a web server¹¹, one of the plurality of flexible date search options comprising performing a search based on a user entered trip date interval and a user entered trip length, the user entered trip date interval comprising a user entered departure date and a user entered return date, wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date¹²;

receiving a search option selection from the user via a network¹³;

requesting travel date information from the user based on the search option selection¹⁴;

receiving the travel date information from the user via the network¹⁵;

p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

8 See Appellant's specification at p. 2, lns. 11-12, 23-25; p. 4, ln. 6 – p. 5, ln. 2; p. 9, lns 7-19; p. 10, ln. 16 – p. 11, ln. 29; p. 12, ln. 22 – p. 13, ln. 31; p. 14, ln. 16 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

9 See Appellant's specification at p. 2, lns. 6-9, 11-12, 23-32; p. 3, lns. 1-2, 7-9; p. 4, ln. 6 – p. 5, ln. 2; p. 9, ln. 19 – p. 11, ln. 27; p. 13, lns. 10-31; p. 15, ln. 6 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

10 See Appellant's specification at p. 1, ln. 1 – p. 16, ln. 9, p. 22, lns. 1-8; and Figs. 1-11; *inter alia*.

11 See Appellant's specification at p. 2, lns. 1-6, 13-15, and 19-22; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 2; p. 6, ln. 1 – p. 9, ln. 20; p. 11, ln. 28 – p. 13, ln. 9; p. 14, ln. 1 – p. 15, ln. 5; p. 22, lns. 1-8; and Figs. 1, 3, 6, and 9; *inter alia*.

12 See Appellant's specification at p. 2, lns. 1-6, 13-15, and 19-22; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 7, ln. 2; p. 14, ln. 1 – p. 15, ln. 5; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

13 See Appellant's specification at p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 2; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

14 See Appellant's specification at p. 2, lns. 13-15; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 12, ln. 31 – p. 13, ln. 9; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

15 See Appellant's specification at p. 2, lns. 13-15; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 8, ln. 4; p. 11,

identifying one or more departure dates and one or more return dates based on the travel date information with an application server, where at least one of said one or more departure dates and said one or more return dates comprises more than one date¹⁶;

identifying a plurality of date pairs with the application server, each date pair comprising one of said one or more departure dates and one of said one or more return dates¹⁷;

searching for fares for itineraries corresponding to each date pair with a search engine¹⁸; and

displaying said fares on a display¹⁹.

C. Independent Claim 29

A system for searching for and displaying travel itineraries and fares for flexible travel schedules²⁰, comprising:

means for receiving a flexible date search option selection from a user²¹, the means comprising simultaneously providing a plurality of flexible date search options to the user²²,

ln. 28 – p. 12, ln. 22; p. 12, ln. 31 – p. 13, ln. 9; p. 13, ln. 20 – p. 14, ln. 25; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

16 See Appellant's specification at p. 2, lns. 6-9, 15-18, 22-23; p. 3, lns. 5-9; p. 4, ln. 6 – p. 5, ln. 2; p. 8, ln. 5 – p. 9, ln. 20; p. 10, ln. 29 – p. 11, ln. 15; p. 12, ln. 22 – p. 13, ln. 9; p. 13, lns. 20-31; p. 14, ln. 16 – p. 15, ln. 5; p. 15, ln. 24 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

17 See Appellant's specification at p. 2, lns. 6-9, 15-18, 22-23; p. 3, lns. 5-9; p. 4, ln. 6 – p. 5, ln. 2; p. 8, ln. 5 – p. 9, ln. 20; p. 10, ln. 29 – p. 11, ln. 15; p. 12, ln. 22 – p. 13, ln. 9; p. 13, lns. 20-31; p. 14, ln. 16 – p. 15, ln. 5; p. 15, ln. 24 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

18 See Appellant's specification at p. 2, lns. 6-9, 11-12, 15-18, 22-25; p. 3, lns. 5-9; p. 4, ln. 6 – p. 5, ln. 2; p. 8, ln. 5 – p. 9, ln. 20; p. 10, ln. 16 – p. 11, ln. 27; p. 12, ln. 22 – p. 13, ln. 31; p. 14, ln. 16 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

19 See Appellant's specification at p. 2, lns. 6-9, 11-12, 23-32; p. 3, lns. 1-2, 7-9; p. 4, ln. 6 – p. 5, ln. 2; p. 9, ln. 19 – p. 11, ln. 27; p. 13, lns. 10-31; p. 15, ln. 6 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

20 See Appellant's specification at p. 1, ln. 1 – p. 16, ln. 9, p. 22, lns. 1-8; and Figs. 1-11; *inter alia*.

21 See Appellant's specification at p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 2; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

22 See Appellant's specification at p. 2, lns. 1-6, 13-15, and 19-22; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 2; p. 6, ln. 1 – p. 9, ln. 20; p. 11, ln. 28 – p. 13, ln. 9; p. 14, ln. 1 – p. 15, ln. 5; p. 22, lns. 1-8; and Figs. 1, 3, 6, and 9; *inter alia*.

one of the plurality of flexible date search options comprising performing a search based on a user entered trip date interval and a user entered trip length, the user entered trip date interval comprising a user entered departure date and a user entered return date, wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date²³;

means for receiving travel date information from the user²⁴, the means comprising requesting travel date information from the user based on the flexible date search option selection²⁵;

means for determining all pairs of departure dates and return dates that satisfy the travel date information²⁶; and

search means for identifying itineraries corresponding to said date pairs²⁷.

D. Independent Claim 30

A computer implemented method of identifying a plurality of alternate travel itineraries²⁸, the method comprising the steps of:

receiving travel date information from the user via a network²⁹, the travel date

23 See Appellant's specification at p. 2, lns. 1-6, 13-15, and 19-22; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 7, ln. 2; p. 14, ln. 1 – p. 15, ln. 5; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

24 See Appellant's specification at p. 2, lns. 13-15; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 12, ln. 31 – p. 13, ln. 9; p. 13, ln. 20 – p. 14, ln. 25; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

25 See Appellant's specification at p. 2, lns. 13-15; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 12, ln. 31 – p. 13, ln. 9; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

26 See Appellant's specification at p. 2, lns. 6-9, 15-18, 22-23; p. 3, lns. 5-9; p. 4, ln. 6 – p. 5, ln. 2; p. 8, ln. 5 – p. 9, ln. 20; p. 10, ln. 29 – p. 11, ln. 15; p. 12, ln. 22 – p. 13, ln. 9; p. 13, lns. 20-31; p. 14, ln. 16 – p. 15, ln. 5; p. 15, ln. 24 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

27 See Appellant's specification at p. 2, lns. 6-9, 11-12, 15-18, 22-25; p. 3, lns. 5-9; p. 4, ln. 6 – p. 5, ln. 2; p. 8, ln. 5 – p. 9, ln. 20; p. 10, ln. 16 – p. 11, ln. 27; p. 12, ln. 22 – p. 13, ln. 31; p. 14, ln. 16 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

28 See Appellant's specification at p. 1, ln. 1 – p. 16, ln. 9, p. 22, lns. 1-8; and Figs. 1-11; *inter alia*.

29 See Appellant's specification at p. 2, lns. 13-15; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 8, ln. 4; p. 11, ln. 28 – p. 12, ln. 22; p. 12, ln. 31 – p. 13, ln. 9; p. 13, ln. 20 – p. 14, ln. 25; p. 14, lns. 1-25; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

information comprising a trip date range, the trip date range comprising a user specified earliest departure date and a user specified latest return date, and a trip length, wherein the trip length is less than the trip date range³⁰;

determining all pairs of departure dates and return dates that satisfy the travel date information with an application server³¹;

identifying fares for itineraries corresponding to each of the departure date and return date pairs with a search engine³²; and

displaying the fares on a display³³.

30 See Appellant's specification at p. 2, lns. 1-6, 13-15, and 19-22; p. 3, lns. 3-5; p. 4, ln. 6 – p. 5, ln. 28; p. 6, ln. 1 – p. 7, ln. 2; p. 14, ln. 1 – p. 15, ln. 5; p. 22, lns. 1-8; and Figs. 1-3, 6, and 9; *inter alia*.

31 See Appellant's specification at p. 2, lns. 6-9, 15-18, 22-23; p. 3, lns. 5-9; p. 4, ln. 6 – p. 5, ln. 2; p. 8, ln. 5 – p. 9, ln. 20; p. 10, ln. 29 – p. 11, ln. 15; p. 12, ln. 22 – p. 13, ln. 9; p. 13, lns. 20-31; p. 14, ln. 16 – p. 15, ln. 5; p. 15, ln. 24 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

32 See Appellant's specification at p. 2, lns. 11-12, 23-25; p. 4, ln. 6 – p. 5, ln. 2; p. 9, lns 7-19; p. 10, ln. 16 – p. 11, ln. 29; p. 12, ln. 22 – p. 13, ln. 31; p. 14, ln. 16 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

33 See Appellant's specification at p. 2, lns. 6-9, 11-12, 23-32; p. 3, lns. 1-2, 7-9; p. 4, ln. 6 – p. 5, ln. 2; p. 9, ln. 19 – p. 11, ln. 27; p. 13, lns. 10-31; p. 15, ln. 6 – p. 16, ln. 3; p. 22, lns. 1-8; and Figs. 1, 4, 5, 7, 8, 10, and 11; *inter alia*.

VI. Grounds Of Rejection To Be Reviewed On Appeal

- A. Whether claims 1-6, 9, 11-16, 19-20, 29-30, and 32-41 are unpatentable under 35 U.S.C. §103(a) over U.S. Published Patent Application No. 2004/0078252 (hereafter "Daughtrey") in view of U.S. Published Patent Application No. 2001/0034625 (hereafter "Kwoh").
- B. Whether claims 7-8 and 17-18 are unpatentable under 35 U.S.C. §103(a) over Daughtrey in view of Kwoh and further in view of U.S. Patent No. 6,304,850 (hereafter "Keller").

VII. Argument

In the Final Office Action, the Examiner noted that claims 1-9, 11-30, and 32-41 are pending in the present application, with claims 21-28 withdrawn from consideration and claims 1-9, 11-20, 29-30, and 32-41 finally rejected for various reasons under 35 U.S.C. §103(a). Appellant responded to the Examiner's final rejections by filing a Notice of Appeal on April 19, 2010, to indicate the desire to appeal the final rejection of claims 1-9, 11-20, 29-30, and 32-41 (withdrawn claims 21-28 are not subject to the present appeal). In support of the Notice of Appeal, Appellant is now filing this Appeal Brief. In view of the remarks below, Appellant respectfully submits that claims 1-9, 11-20, 29-30, and 32-41 are in condition for allowance and reversal of the Examiner's final rejections is respectfully requested.

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of presenting a *prima facie* case of obviousness based upon the prior art. MPEP §§2142 – 2143.03 (see also In re Fritch, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992); In re Fine, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988)).

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §§ 706 and 2143 (*see also In re Royka*, 490 F.2d 981, 985, 180 U.S.P.Q. 580, 583 (CCPA 1974)).

As discussed in detail below, Appellant respectfully submits that the Examiner has not established a *prima facie* case of obviousness for any of the claims, because even if the prior art references are combined as the Examiner asserts, which Appellant does not concede is proper, the prior art references when combined do not teach or suggest all the limitations of the claims.

A. The Rejection of Claims 1-6, 9, 11-16, 19-20, 29-30, and 32-41 Under 35 U.S.C. §103(a) Over Daughtrey in View of Kwoh Fails to Establish a *Prima Facie* Case of Obviousness

The Examiner rejected claims 1-6, 9, 11-16, 19-20, 29-30, and 32-41 under 35 U.S.C. §103(a) as being unpatentable over Daughtrey in view of Kwoh. Appellant respectfully traverses this rejection.

1. Claims 1-9, 11-12, and 34

In the following remarks, Appellant will identify at least six different elements of independent claim 1 that are not taught or suggested by Daughtrey or Kwoh, either alone or in combination, thereby establishing that a *prima facie* case of obviousness has not been established in connection with independent claim 1 and its dependent claims.

a. "simultaneously providing a plurality of flexible date search options to a user"

Daughtrey does not teach or suggest, *inter alia*, "simultaneously providing a plurality of flexible date search options to a user", as recited in independent claim 1. As can be seen in Fig. 2 and paragraph [0024] of Daughtrey, the system in Daughtrey only provides a single flexible date search option to the user (panel 41e), which allows a user to search only based on an earliest departure date and a length of stay. The other search options available to a user through the system of Daughtrey are searches for one-way trips (pane 41a), round trips (pane 41b), multi-segments trips (pane 41c), and flexible destinations (pane 41d). There is nothing in Daughtrey suggesting the provision of more than one flexible date search option.

On the contrary, independent claim 1 recites the step of "simultaneously providing a plurality of flexible date search options to a user." As can be seen in Fig. 3 of the present application, a user is provided numerous different flexible search options to select from. For example, in Option 1 in Fig. 3, a user can select to perform a search for a weekend trip during a given selected month. In

Option 2 in Fig. 3, a user can select to perform a search with selected departure and return dates, but with some flexibility around the departure and/or return dates (e.g. the user wants to depart on Date A and return on Date B, but can leave or return 1 day earlier or later if needed). In Option 3 in Fig. 3, a user can select to perform a search for a trip of a predefined length of time during a selected time frame (e.g. the user wants to take a 4 day trip some time in September). All of these different flexible date search options are provided to the user for the users selection. Unlike the present application, Daughtrey only teaches providing one flexible search option to the user, the ability to search based on an earliest departure date and length of stay. There are no additional flexible search date options taught or suggested in Daughtrey.

In the Office Action, the Examiner relies on "Fig. 2 and para. 31" of Daughtrey as the basis for this rejection (see section 3, first paragraph, page 6 of the Final Office Action). In reviewing Fig. 2 and paragraph [0031], it is clear that there is no mention of simultaneously providing a plurality of flexible date search options as recited in independent claim 1. A telephone interview was conducted on September 23, 2008, between Examiner Hayes, Gregory M. Smith, and Paul M. McGinley to discuss this limitation of independent claim 1 and to explain why Daughtrey does not teach or suggest this limitation. Shortly after this telephone interview, Examiner Hayes left a voicemail for Paul M. McGinley on October 8, 2008, indicating that Examiner Hayes acknowledged that Daughtrey does not teach or suggest "simultaneously providing a plurality of flexible date search options to a user", as recited in independent claim 1. A transcript of Examiner Hayes' voicemail can be found in Appendix A of the Evidence Appendix.

In the Final Office Action, the Examiner presents for the first time a new interpretation of Daughtrey, which is contradictory to his prior remarks presented in his voicemail. More particularly, with reference to the Examiner's "Response to Arguments" section of the Final Office

Action, the Examiner purports that Fig. 2 and paragraph [0033] of Daughtrey disclose "simultaneously providing a plurality of flexible date search options to a user", as recited in independent claim 1. Specifically, the Examiner asserts that the items shown on tab 41e of Daughtrey are a first flexible date search option and the presence of the "Show Advanced Options" button is a second flexible date search option. This is not correct.

The "Show Advanced Options" button in tab 41e of Daughtrey is not a second flexible date search option, in fact, it is not a flexible date search option at all. Rather, the "Show Advanced Options" button is nothing more than a way for a user to enter a more detailed length of stay in place of the predefined options presented in the length of stay pull down menu 44 in tab 41e. It does nothing more than allow a user to provide more detail about the length of stay in the single flexible search date option of tab 41e. In fact paragraph [0033] of Daughtrey, which the Examiner attempts to rely upon to support his contention, supports Appellant's position that "Show Advanced Options" is nothing more than an extension of the length of stay field 44 on tab 41e of Fig. 2. More particularly, paragraph [0033] states that "[t]he duration specification [field 44] may include additional constraints beyond the length of stay [shown on tab 41e]...", "[e]ach additional constraint reduces the computational burden on the search engine...", and "the additional constraints make it easier for the user to find a useful ticket..." All of these citations from Daughtrey clearly articulate that a user may enter additional constraints/travel information to those constraints shown on tab 41e in Fig. 2, thereby establishing that Daughtrey discloses a single flexible date search option. For example, rather than standard length of stay descriptions, such as "a day trip" or "weekend trip", the "Show Advanced Options" button can contain additional length of stay descriptions, such as "one-way ticket only" or "one-day business trip." (see paragraphs [0032] and [0033] of Daughtrey)

Therefore, it is clear that the "Show Advanced Options" button shown in Fig. 2 of Daughtrey does not provide a user with an second flexible search date option, but only allows the user to define his length of stay in a different manner. If Daughtrey intended there to be more than one flexible date search option, as purported by the Examiner, Daughtrey would not have used the word "additional" when speaking of "constraints." The use of the word "additional" implies a dependency or relationship between the constraints, or length of stay, described in paragraph [0033] and the length of stay field 44 shown on tab 41e. Such a dependency establishes that all the constraints are for the same single flexible date search option. Thus, the preponderance of the evidence supports the Appellant's position that the entry of additional constraints described in paragraph [0033] relate to the single/same flexible date search option shown on tab 41e.

The Examiner does not attempt to use Kwoh to cure this deficiency. That is because Kwoh suggest nothing about providing multiple flexible date search options and does not cure this deficiency of Daughtrey. Accordingly, Appellant respectfully submits that Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 1.

b. "user entered trip date interval comprising a user entered departure date and a user entered return date"

Daughtrey does not teach or suggest, *inter alia*, a "user entered trip date interval comprising a user entered departure date and a user entered return date" (emphasis added), as recited in independent claim 1. Daughtrey only allows a user to specify an earliest departure date and a length of stay and does not allow a user to specify a return date (see Fig. 2 of Daughtrey). This deficiency of Daughtrey has been acknowledged several times by the Examiner, previously in paragraph 6, page 5 of the Office Action dated June 10, 2009, and most recently in the last paragraph, page 6 of the Final Office Action. Accordingly, the Examiner has conceded that Daughtrey does not teach or suggest this limitation of independent claim 1.

The Examiner attempts to use Kwoh to cure this deficiency of Daughtrey. More particularly, the Examiner states that "Kwoh teaches a user entering a return date for the purposes of searching for a flight (see para.48 [of Kwoh])." The Examiner's reasoning for combining the teachings of Kwoh with Daughtrey is as follows: "One of ordinary skill in the art... would have found it obvious and recognized that a user entering a return date would have yielded predictable results. i.e. providing search parameters for a travel search as described in Daughtrey para. 25" (see last paragraph, page 6 of the Final Office Action). With specific reference to paragraph 25 of Daughtrey, it discloses non-preferred and inferior searching methods, which are ultimately used to establish the benefits of the Daughtrey invention over these inferior searching methods. More particularly, paragraph 25 recites that the search engine would be overburdened if a user entered an earliest possible departure date, latest possible departure date, earliest possible return date, and latest possible return date due to the large number of combinations resulting from such input data (according to Daughtrey, this would return nearly ten million flight combinations). Instead, Daughtrey teaches a single flexible date search option that includes only a departure date and length of stay. According to Daughtrey, "[w]ith the layover length specified [rather than a return date], the computational burden on the search engine is significantly reduced" (according to Daughtrey, a tenfold savings over the approach using a return date). Accordingly, paragraph 25 and the rest of Daughtrey actually teaches away from entering return dates. "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984); MPEP § 2141.02. It is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731, 743, 218 U.S.P.Q. 769, 779 (Fed. Cir. 1983); MPEP § 2145(X)(D)(2).

In the Final Office Action, the Examiner asserts that the above disclosure of Daughtrey does not rise to the level of teaching away (see page 3, second and third paragraphs). Initially, Appellant respectfully submits that the Examiner has introduced, for self-fulfilling purposes, a word into his relied upon citation of Daughtrey that is not present in the actual citation. Specifically, with reference to line 7 of the second paragraph on page 3 of the Final Office Action, the Examiner introduces the word "possibly" in an attempt to deemphasize the tone in which Daughtrey criticizes a user entered return date. The Examiner purports that use of the word "could" and his self-introduced word "possibly" are not strong enough words to establish a teaching away of a user entered return date. Appellant respectfully disagrees and believes Daughtrey supports an assertion of teaching away. First, the purpose of the Daughtrey invention is to decrease the burden on a search engine. Second, the citation in paragraph [0025] of Daughtrey explicitly states an example of when a search engine is overburdened and said example indicates that entry of return dates overburdens a search engine. Third, the explicit disclosure of tab 41e of Daughtrey does not allow a user to enter a return date and Daughtrey specifically states that removing this limitation and having the user enter a trip length instead reduced the burden on the search engine tenfold, which is the recited purpose of the invention in Daughtrey. These undeniable facts presented in Daughtrey clearly establish that Daughtrey criticizes, discredits, or otherwise discourages a user entered return date. In addition, these three undeniable facts establish that it is the Examiner's reliance on the word "could" and his self-introduced word "possibly" that is a dramatic departure from the disclosure of Daughtrey. A determination of a teaching away should rely on the totality of the evidence, rather than on a single word like "could".

Further, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the

proposed modification. In re Gordon, 733 F.2d at 902, 221 U.S.P.Q. at 1127. Daughtrey explicitly teaches in paragraph 25 that it is undesirable to include a user entered return date because the results would overburden the search engine and explicitly identifies the purpose of the Daughtrey invention to remove the burden on the search engine by not using a user entered return date (see tab 41e in Fig. 2). Thus, the Examiner's attempt to modify Daughtrey to include the user entered return date of Kwoh contradicts the explicit disclosure of Daughtrey and would render the Daughtrey invention unsatisfactory for its intended purpose. If one were to add back the return date from Kwoh into the invention of Daughtrey, which Daughtrey explicitly removed, the system would be right back to the system that Daughtrey teaches overburdens the search engine and that Daughtrey is specifically attempting to avoid. Accordingly, Appellant respectfully submits that the Examiner's proposed combination of Kwoh with Daughtrey is improper.

c. "a user entered trip date interval and a user entered trip length"

Daughtrey does not teach or suggest, *inter alia*, "a user entered trip date interval and a user entered trip length" (emphasis added), as recited in independent claim 1. With reference to Fig. 2, Daughtrey only discloses a user entered departure date (see reference no. 43) and a user entered trip length (see reference no. 44). As indicated in Section VII(A)(1)(b) above, a user entered trip date interval comprises "a user entered departure date and a user entered return date" (emphasis added). Since the Examiner acknowledges that Daughtrey does not teach or suggest a "user entered return date", Daughtrey cannot teach or suggest a user entered trip date interval, which includes a user entered return date. Accordingly, Daughtrey does not teach or suggest this limitation of independent claim 1.

The Examiner initially only relied on "Fig. 2" of Daughtrey to reject this limitation of independent claim 1 (see section 3, first paragraph of the Final Office Action where the Examiner

solely recites "see Fig. 2" after this limitation of claim 1). However, as discussed above, the Examiner admitted that Daughtrey does not teach or suggest a user entered return date, and therefore could not teach or suggest the recited user entered trip date. Later, in the rejection presented in the Final Office Action (see page 6, last paragraph), the Examiner attempts to rely on Kwoh to cure this deficiency of Daughtrey. For the sake of brevity, reference is made to Section VII(A)(1)(b) above where Appellant presents remarks to rebut the Examiner's contended combination of Kwoh and Daughtrey and the contended modification of Daughtrey to include a user entered return date, which Daughtrey explicitly teaches must be removed to avoid overburdening the search engine. Without a user entered return date, Daughtrey cannot teach or suggest a "user entered trip date interval" as recited in independent claim 1.

In the "Response to Arguments" section of the Final Office Action, the Examiner presents trivial remarks regarding the Appellant not understanding the rejection and suggests Appellant go back and read the June 10, 2009 Office Action. As specified in Appellant's Response to the June 10, 2009 Office Action and as specified in the previous paragraph, Appellant clearly understood the Examiner's intention of rejecting this limitation of claim 1 with a combination of Daughtrey and Kwoh, which is why Appellant addressed both Daughtrey and Kwoh in the remarks of the Response to the June 10, 2009 Office Action and currently addressed both Daughtrey and Kwoh in this section of the Appeal Brief. In said remarks, Appellant emphasizes inconsistencies presented by the Examiner in the prosecution record. More particularly, such inconsistencies include the Examiner's understanding that a "user entered trip date interval" comprised both a "user entered departure date" and a "user entered return date", the Examiner's acknowledgement that Daughtrey does not disclose a "user entered return date", and the Examiner's sole introduction of "Fig. 2" of Daughtrey after the limitation of a "user entered trip date interval". How can you have the interval if you do not have the

return date? Appellant's remarks were intended to identify that one cannot have the recited trip date interval if there is no user entered return date. Appellant respectfully submits that it is the Examiner that should go back and review Appellant's Response to the June 10, 2009 Office Action for a full understanding of Appellant's statements.

d. "wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date"

Daughtrey does not teach or suggest, *inter alia*, "wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date" (emphasis added), as recited in independent claim 1. As is clear from the present application, the user entered trip length is the length of time that the user will be staying at their destination (e.g. 1 week). This period of time must be less than the time between a possible departure date and a possible return date, or the search would not make any sense. How could a user want to leave on September 1 and return on September 3, but want to stay for 1 week?

As acknowledged by the Examiner numerous times throughout prosecution of the present application (see paragraph 6, page 5 of the Office Action dated June 10, 2009 and most recently in the last paragraph, page 6 of the Final Office Action), Daughtrey does not teach or suggest a user entering all three of: a departure date, a return date, and a trip length. Therefore, Daughtrey cannot teach or suggest a trip length being less than the period of time between a departure date and return date.

Also, in section 3 of the Office Action dated June 25, 2008, the Examiner refers to Fig. 2 of Daughtrey and indicates that the return date of "October 17" is derived from the departure date of "October 10" plus the trip interval of "1 week". In other words, the departure date plus the trip length equals the return date. This simple mathematical equation used by the Examiner to arrive at a

return date clearly establishes that the trip length disclosed by Daughtrey is equal to the period of time between the departure date and the return date, not less than the time period between the departure date and the return date, as recited in independent claim 1. Accordingly, Daughtrey does not teach or suggest this limitation of independent claim 1.

Later, the Examiner acknowledges that Daughtrey does not teach a trip length less than a period of time between a departure date and the return date (see page 7, lines 1-5 of the Final Office Action). However, the Examiner does not provide an additional prior art reference to cure this deficiency of Daughtrey. Accordingly, the Examiner has failed to show a prior art reference or combination of prior art references that teach this limitation of independent claim 1.

Instead, the Examiner attempts to rely on *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) to cure this deficiency of Daughtrey. *In re Aller* relates to temperature ranges, element ranges of compositions, and laboratory experimentation to arrive at the desired temperature and composition ranges. The Examiner relies on *In re Aller* to contend that "it is not inventive to discover the optimum or workable ranges where the general conditions of a claim are disclosed in the prior art." Appellant respectfully submits that the facts and circumstances of *In re Aller* are non-analogous with independent claim 1 of the present application. More particularly, the present application and independent claim 1 generally relate to a method of identifying a plurality of alternate travel itineraries achieved by the use of electronics and software. Receiving a user entered trip length that is less than a user entered trip date interval has nothing to do with optimizing ranges. There are no ranges to be optimized. Rather, independent claim 1 recites "the user entered trip length is less than a period of time between the user entered departure date and the user entered return date" (emphasis added by Appellant). Furthermore, the basis of *In re Aller* requires that "the general conditions of the claim [be] disclosed in the prior art." Appellant establishes in the previous

sections and the following sections of this Appeal Brief that Daughtrey and Kwoh lack numerous elements of independent claim 1, thereby establishing that "the general conditions" of independent claim 1 are not present in Daughtrey and Kwoh. Regardless of whether or not the "general conditions" are met by Daughtrey and Kwoh, independent claim 1 is non-analogous to the context of *In re Aller* and independent claim 1 is not related to optimizing ranges. There is no range in Daughtrey that can be modified or optimized to reach the claimed limitation. By adding the trip length to the departure date, the result will always be equal to the trip length. There is no "optimization" that can be done to make this any different.

In the "Response to Arguments" section of the Final Office Action (see page 4, 2nd paragraph), the Examiner also attempts to address the "general conditions" portion of Appellant's remarks presented in the Response filed to the June 10, 2009 Office Action relating to the Examiner's reliance on *In re Aller* to reject the "less than" limitation of independent claim 1. The Examiner fails to address the "non-analogous and no optimization of ranges" portion of Appellant's remarks. Regarding the Examiner's remarks concerning "general conditions", the Examiner states that the Appellant's acknowledgement that the "user entered [trip] date [interval] in Daughtrey is equal to the period of time between the departure date and the return date...[and that the] general condition of the claim is shown in that example alone." The Examiner solely uses *In re Aller* to reject the limitation of "less than" and is now purporting that "equal to" is sufficiently similar to "less than" to meet the general conditions of independent claim 1. Appellant is perplexed as to how "equal to" is generally the same as "less than" in the context of meeting the general conditions of a claim. Clearly, in terms of mathematics, "equal to" and "less than" are worlds apart. Something that is equal to cannot also be less than under any conditions. In addition, independent claim 1 has seven steps and numerous limitations within those seven steps, and Appellant believes a single example

distantly related to a single limitation of the entire claim is insufficient to establish that the general conditions of an entire claim are met by the single example.

Furthermore, instead of identifying a prior art reference or combination of prior art references that teach or suggest the limitation of "wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date", the Examiner conjures yet another reason to ignore the patentability of this limitation and continued to reject independent claim 1. More particularly, the Examiner now states that "Applicant has not persuasively demonstrated the criticality of the user entered trip length is less than a period of time between the user entered departure date and the user entered return date versus the departure date and the trip length being equal to the return date taught in Daughtrey in view of Kwoh."

Initially, Appellant questions the basis for raising this "criticality" reasoning with respect to this limitation of independent claim 1. It appears the Examiner is arbitrarily applying the "criticality" issue to this limitation because he cannot point to any specific teaching in the prior art. What makes the "less than" limitation any different than all the other limitations of independent claim 1? Appellant respectfully believes that the "criticality" reasoning was applied to support a preemptive rejection of independent claim 1, and Appellant believes this reasoning is improper. Thus, Appellant believes no remarks are required to establish criticality of the "less than" limitation of independent claim 1.

However, in the interest of cooperation and advancement of prosecution of the present application, Appellant presents the following remarks to address the "criticality" issue presented by the Examiner. As discussed above, having a trip length less than a period of time between the user entered departure date and the user entered return date is important because it enables multiple pairs of departure dates and return dates to be determined. If the travel length is equal to the time period

between a departure date and a return date, which is the case in Daughtrey and Kwoh (Examiner admits this on page 7, lines 13-14 of the Final Office Action), then only one date pair is determined and there is no flexible date search (flexible date search is the purpose of the present invention). Not only do Daughtrey and Kwoh fail to teach or suggest this limitation of independent claim 1, Daughtrey and Kwoh would have no way of determining multiple date pairs as claimed in independent claim 1 because they only have one departure date and one return date. For at least this reason, this limitation of independent claim 1 is critical.

e. "receiving a search option selection from a user"

Daughtrey does not teach or suggest, *inter alia*, "receiving a search option selection from a user", as recited in independent claim 1. As indicated above, Daughtrey does not teach or suggest "simultaneously providing a plurality of flexible date search options." Since Daughtrey does not teach or suggest "simultaneously providing a plurality of flexible date search options", the user has no options from which to select. In other words, Daughtrey only discloses a single flexible date search option and, therefore, the user is forced to use the single flexible date search option provided. There are no other flexible date search options to select from. Thus, the user does not perform any "selecting" with Daughtrey, which precludes Daughtrey from teaching or suggesting "receiving a search option selection from the user" (emphasis added).

The Examiner attempts to rely on Fig. 2 and paragraph [0032], lines 11-13 of Daughtrey to teach this limitation of independent claim 1. However, this portion of paragraph [0032] merely represents selecting a "Go" button that initiates a fare search based on entered criteria such as number of adults, seniors, youths, children, infants. Nowhere in this portion of paragraph [0032] or anywhere else in Daughtrey does disclosure exist of selecting from a plurality of flexible date search options. Accordingly, Daughtrey does not teach or suggest this limitation of independent claim 1.

The Examiner does not attempt to use Kwoh to cure this deficiency as Kwoh also does not teach or suggest "receiving a search option selection from a user".

In the "Response to Arguments" section of the Final Office Action (see last paragraph on page 4), the Examiner asserts that "receiving a search option selection from a user" does not require multiple search options from which to choose and relies on the "plain meaning of the term". Regardless of what the actual "plain meaning of the term" is, the Examiner is clearly indicating that he is not relying on the context of the claim to define terms. When interpreting a claim, claim limitations having antecedent basis or relying on other limitations previously presented in the claim must also be considered. The Examiner cannot ignore limitations presented previously in the claim when interpreting limitations presented later in the same claim. In the present case, claim 1 clearly recites "simultaneously providing a plurality of flexible date search options to a user", then, claim 1 later recites "receiving a search option selection from a user". The plurality of flexible date search options are the only "options" referenced in independent claim 1 and the later recited "receiving a search option selection from a user" clearly is referring to a user selecting one of the plurality of flexible date search options. Even with the Examiner's "plain meaning" of the word "selection", to select something the user must have multiple options to select from. Otherwise, there is nothing to select. This is supported by the context in which the word "selection" appears in claim 1, which does require that a "selection" occur from a "plurality of flexible date search options". As a result, the Examiner's purported interpretation of "receiving a search option selection from the user ..." is improper. Thus, if Daughtrey does not disclose a plurality of flexible date search options, Daughtrey cannot select from a plurality of flexible date search options that do not exist.

For these and other reasons, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 1.

f. "requesting travel date information from the user based on the search option selection"

Daughtrey does not teach or suggest, *inter alia*, "requesting travel date information from the user based on the search option selection" (emphasis added), as recited in independent claim 1. As is clear from the present application, and can be seen in Fig. 3, based on the particular search option selected by the user, the system will request different travel information. For example, if the user selects Option 1, the system will request a month of travel. However, if the user selects Option 2, the system will request a departure date, a return date, a flexible time around the departure date, and a flexible time around the return date. If the user selects Option 3, the system will request a departure date, a return date, and a length of stay. Therefore, the system will request different travel date information from the user based on which flexible date travel option is selected by the user.

As indicated in Section VII(A)(1)(e) above, in Daughtrey the user cannot select a flexible date search option because only one flexible date search option exists and the user is forced to use the single flexible date search option. Since the user does not "select" a flexible date search option, Daughtrey cannot disclose a subsequent step that is based on or relies on a selected flexible date search option, which does not exist. With respect to the specific limitation of independent claim 1, Daughtrey cannot teach or suggest "requesting travel date information from the user based on the search option selection" (emphasis added), since Daughtrey does not teach or suggest offering multiple flexible search date options or receiving a search option selection. Accordingly, Daughtrey does not teach or suggest this limitation of independent claim 1. The Examiner does not present any specific disclosure of Daughtrey that he believes represents this limitation of independent claim 1 (see page 6, line 8 of the Final Office Action). That is because no such disclosure exists. Also, the Examiner does not attempt to use Kwoh to cure this deficiency, because Kwoh does not cure this

deficiency of Daughtrey and does not teach or suggest "requesting travel date information from the user based on the search option selection".

In the "Response to Arguments" section of the Final Office Action (see the first paragraph on page 5), the Examiner contends that Appellant is arguing "requesting travel date information from the user based on the search option selection", as recited in independent claim 1, much more narrowly than recited. The Examiner also contends that "[t]his [limitation] is 'obviously' done when a user of the system of Daughtrey makes selections and then clicks 'GO' to process the query." Initially, Appellant is arguing the actual claim limitation as recited in independent claim 1 and, therefore, cannot be arguing this claim limitation narrower than it actually is. Appellant believes it is in fact the Examiner that does not understand this claim limitation of independent claim 1, and the Examiner's own remarks raised in this section of the "Response to Arguments" substantiates the Examiner's misunderstanding. Specifically, the Examiner's statement that "[t]his [limitation] is 'obviously' done when a user of the system of Daughtrey makes selections and then clicks 'GO' to process the query" substantiates the Examiner's failure to properly interpret the claim. In Daughtrey, clicking "GO" as indicated by the Examiner initiates a search engine 21 to conduct a search in a database 63 based on information provided by a user. Independent claim 1 recites "requesting travel date information from the user based on the search option selection". This limitation of claim 1 is requesting information from a user, whereas clicking "GO" in Daughtrey is conducting a search in a database 63 or, in other words, requesting information from the database 63. Obviously, database 63 is not a user. Thus, Examiner misinterprets this claim limitation of claim 1. The Examiner is reminded that claims should be interpreted as written.

For these and other reasons, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 1.

g. Conclusion

For at least these reasons, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest all the subject matter of independent claim 1 and, therefore, the Examiner fails to establish a *prima facie* case of obviousness of independent claim 1. Accordingly, independent claim 1 is allowable. Claims 2-9, 11, 12, and 34 depend from independent claim 1 and are allowable for at least the same reasons as independent claim 1.

In the "Response to Arguments" section of the Final Office Action (see "Examiner Note" on page 5), the Examiner states "Applicant has refuted elements of the claimed invention that are plainly shown in Fig. 2 of Daughtrey ... [and] has attached Daughtrey's Figs. 2 and Applicant's Fig. 3 in an effort to assist the Applicant in distinguishing their claims from the applied prior art references." Appellant respectfully submits that no assistance is required to distinguish the currently pending claims over the applied prior art references because said currently pending claims already distinguish over the applied prior art references as written in their current form. Appellant wishes to conclude this section of the Appeal Brief by offering such assistance to the Examiner by generally characterizing the claimed subject matter of independent claim 1 and the disclosure of Daughtrey in the hopes that the Examiner will realize how different independent claim 1 is from Daughtrey. It is expected that the Examiner will respond to the following remarks by contending that the following general characterizations argue the claims more narrowly than recited or make a similar type of contention. So, in an effort to dissuade such a contention by the Examiner, Appellant submits that the following general characterizations are not intended to replace the actual claim language of independent claim 1 as written, but, instead, are merely offered for perspective.

Claim 1 generally relates to simultaneously providing a plurality of flexible date search options (as shown in Fig. 3 of the patent application) so a user may simultaneously view the plurality

of options and select one of the plurality of flexible date search options. One of the plurality of options comprises the user entering a departure date, a return date, and a trip length with the trip length less than the period of time between the departure date and return date. Based on the user's selection (in other words, after the user makes the selection), travel date information is requested from the user. Then, with the receipt of the user's travel date information, all pairs of departure dates and return dates that satisfy the user's travel date information are determined. In the instance of the exemplary option above, more than one pair of departure and return dates will be returned because the trip length is less than the period of time between the departure date and return date. Fares are then identified for all the departure and return date pairs and displayed.

With reference to Fig. 2 of Daughtrey, which is heavily relied upon by the Examiner for the claim rejections, Daughtrey discloses a display having a plurality of tabs 41a-41e, with only one viewable at a time and only one (41e) relating to a flexible date search option (substantiated in Examiner Hayes' voicemail). The other tabs 41a-41d relate to basic searches having fixed date capabilities rather than flexible date capabilities. Fig. 2 of Daughtrey illustrates a display when tab 41e is selected. On tab 41e, a user sees information request fields, an "Advanced Options" icon that, if selected, will allow a user to see additional information request fields, and a "GO" icon that, when selected, initiates a search for fares. A user enters the relevant information and selects "GO" to initiate a fare search. After selecting "GO", no further travel date information is requested from the user.

As can be seen, Daughtrey does not: simultaneously show a plurality of flexible date search options, thereby precluding selection of one option from a plurality of options; does not request information from a user after or based on the user's selection of one of the plurality of flexible date search options; the single flexible date search option does not provide a user with the option to enter

all three of a departure date, a return date, and a trip length; does not disclose a trip length that is less than a period of time between the departure date and return date; and a variety of other steps of independent claim 1. In essence, Daughtrey is extremely different in function and disclosure from independent claim 1, and Appellant respectfully submits that the Examiner is stretching, improperly interpreting, and just plainly conjuring disclosure that does not exist in an attempt to force a reading of independent claim 1 upon Daughtrey.

2. Claims 13-20 and 35-37

In the following remarks, Appellant will identify at least six different elements of independent claim 13 that are not taught or suggested by Daughtrey and Kwoh, either alone or in combination, thereby establishing that a *prima facie* case of obviousness has not been established in connection with independent claim 13 and its dependent claims.

a. "simultaneously providing a plurality of flexible date search options to a user"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "simultaneously providing a plurality of flexible date search options to a user", as recited in independent claim 13. For the sake of brevity, the remarks presented above in Section VII(A)(1)(a) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 13 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 13.

b. "user entered trip date interval comprising a user entered departure date and a user entered return date"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "user entered trip date interval comprising a user entered departure date and a user entered return date" (emphasis added), as recited in independent claim 13. For the sake of brevity, the remarks presented above in Section

VII(A)(1)(b) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 13 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 13.

c. "a user entered trip date interval and a user entered trip length"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "a user entered trip date interval and a user entered trip length" (emphasis added), as recited in independent claim 13. For the sake of brevity, the remarks presented above in Section VII(A)(1)(c) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 13 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 13.

d. "wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date" (emphasis added), as recited in independent claim 13. For the sake of brevity, the remarks presented above in Section VII(A)(1)(d) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 13 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 13.

e. "receiving a search option selection from a user"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "receiving a search option selection from a user" (emphasis added), as recited in independent claim 13. For the sake of brevity, the

remarks presented above in Section VII(A)(1)(e) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 13 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 13.

f. "requesting travel date information from the user based on the search option selection"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "requesting travel date information from the user based on the search option selection" (emphasis added), as recited in independent claim 13. For the sake of brevity, the remarks presented above in Section VII(A)(1)(f) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 13 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 13.

g. Conclusion

For at least these reasons, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest all the subject matter of independent claim 13 and, therefore, the Examiner fails to establish a *prima facie* case of obviousness of independent claim 13. Accordingly, independent claim 13 is allowable. Claims 14-20 and 35-37 depend from independent claim 13 and are allowable for at least the same reasons as independent claim 13.

3. Claims 29 and 38-40

In the following remarks, Appellant will identify at least six different elements of independent claim 29 that are not taught or suggested by Daughtrey and Kwoh, either alone or in combination, thereby establishing that a *prima facie* case of obviousness has not been established in connection with independent claim 29 and its dependent claims.

a. "means for receiving a flexible date search option selection from a user, the means comprising simultaneously providing a plurality of flexible date search options to a user"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "means for receiving a flexible date search option selection from a user, the means comprising simultaneously providing a plurality of flexible date search options to a user", as recited in independent claim 29. For the sake of brevity, the remarks presented above in Section VII(A)(1)(a) to distinguish essentially the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 29 from Daughtrey and Kwoh. Neither Daughtrey nor Kwoh teach providing multiple flexible date search options or receiving a flexible date search option selection at all. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 29.

b. "user entered trip date interval comprising a user entered departure date and a user entered return date"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, a "user entered trip date interval comprising a user entered departure date and a user entered return date" (emphasis added), as recited in independent claim 29. For the sake of brevity, the remarks presented above in Section VII(A)(1)(b) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 29 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 29.

c. "a user entered trip date interval and a user entered trip length"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "a user entered trip date interval and a user entered trip length" (emphasis added), as recited in independent claim 29. For the sake of

brevity, the remarks presented above in Section VII(A)(1)(c) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 29 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 29.

d. "wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date" (emphasis added), as recited in independent claim 29. For the sake of brevity, the remarks presented above in Section VII(A)(1)(d) to distinguish the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 29 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 29.

e. "means for receiving a search option selection from a user"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "means for receiving a search option selection from a user" (emphasis added), as recited in independent claim 29. For the sake of brevity, the remarks presented above in Section VII(A)(1)(e) to distinguish essentially the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 29 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 29.

f. "the means comprising requesting travel date information from the user based on the flexible date search option selection"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "the means [for receiving travel date information from the user] comprising requesting travel date information from the user based on the flexible date search option selection" (emphasis added), as recited in independent claim 29. For the sake of brevity, the remarks presented above in Section VII(A)(1)(f) to distinguish essentially the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 29 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 29.

g. Conclusion

For at least these reasons, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest all the subject matter of independent claim 29. Therefore, Appellant respectfully submits that the Examiner fails to establish a *prima facie* case of obviousness of independent claim 29. Accordingly, independent claim 29 is allowable. Claims 38-40 depend from independent claim 29 and are allowable for at least the same reasons as independent claim 29.

4. Claims 30, 32, 33, and 41

In the following remarks, Appellant will identify at least three different elements of independent claim 30 that are not taught or suggested by Daughtrey and Kwoh, either alone or in combination, thereby establishing that a *prima facie* case of obviousness has not been established in connection with independent claim 30 and its dependent claims.

a. "the trip date range comprising a user specified earliest departure date and a user specified latest return date"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "the trip date range comprising a user specified earliest departure date and a user specified latest return date" (emphasis added), as recited in independent claim 30. For the sake of brevity, the remarks presented above in Section VII(A)(1)(b) to distinguish the missing limitation of a user entered return date in and a trip date interval comprising the user entered return date in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 30 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 30.

b. "the travel date information comprising a trip date range...and a trip length"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "the travel date information comprising a trip date range...and a trip length" (emphasis added), as recited in independent claim 30. For the sake of brevity, the remarks presented above in Section VII(A)(1)(c) to distinguish the missing limitation of a user entered trip date interval and a user entered trip length in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to distinguish independent claim 30 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 30.

c. "the trip length is less than the trip date range"

Neither Daughtrey nor Kwoh teach or suggest, *inter alia*, "wherein the trip length is less than the trip date range" (emphasis added), as recited in independent claim 30. For the sake of brevity, the remarks presented above in Section VII(A)(1)(d) to distinguish essentially the same limitation in independent claim 1 from Daughtrey and Kwoh are relied upon herein and apply *mutatis mutandis* to

distinguish independent claim 30 from Daughtrey and Kwoh. Accordingly, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest this limitation of independent claim 30.

d. Conclusion

For at least these reasons, Daughtrey and Kwoh, either alone or in combination, do not teach or suggest all the subject matter of independent claim 30. Therefore, Appellant respectfully submits that the Examiner fails to establish a *prima facie* case of obviousness. Accordingly, independent claim 30 is allowable. Claims 32, 33, and 41 depend from independent claim 30 and are allowable for at least the same reasons.

B. The Rejection of Claims 7-8 and 17-18 Under 35 U.S.C. §103(a) Over Daughtrey in View of Kwoh and further in view of Keller Fails to Establish a *Prima Facie* Case of Obviousness

Claims 7 and 8 depend from independent claim 1 and claims 17 and 18 depend from independent claim 13. As for independent claims 1 and 13, as established in Sections VII(A)(1) and VII(A)(2) above, neither Daughtrey nor Kwoh teach or suggest all of the limitations of independent claims 1 or 13. The addition of Keller as an additional reference does not cure this deficiency. Keller does not teach or suggest any of the missing limitations from independent claims 1 and 13 discussed in Sections VII(A)(1) and VII(A)(2) above and was only cited by the Examiner for allegedly disclosing the specific additional limitations from dependent claims 7-8 and 17-18.

Therefore, for the reasons discussed above in Sections VII(A)(1) and VII(A)(2), Daughtrey, Kwoh, and Keller, either alone or in combination, do not teach or suggest all of the subject matter of independent claims 1 or 13. Since claims 7-8 and 17-18 depend from independent claims 1 and 13, these claims are allowable over these references for at least the same reasons. Therefore, Appellant respectfully submits that the Examiner fails to establish a *prima facie* case of obviousness for claims 7-8 and 17-18.

VIII. Claims Appendix

1. A computer implemented method of identifying a plurality of alternate travel itineraries, the method comprising the steps of:

simultaneously providing a plurality of flexible date search options to a user with a web server, one of the plurality of flexible date search options comprising performing a search based on a user entered trip date interval and a user entered trip length, the user entered trip date interval comprising a user entered departure date and a user entered return date, wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date;

receiving a search option selection from the user via a network;

requesting travel date information from the user based on the search option selection;

receiving the travel date information from the user via the network;

determining all pairs of departure dates and return dates that satisfy the travel date information with an application server;

identifying fares for itineraries corresponding to each of the departure date and return date pairs with a search engine; and

displaying the fares on a display.

2. The method of claim 1 wherein the itineraries are air travel itineraries.

3. The method of claim 1 wherein the travel date information comprises a date interval during which a weekend trip is desired.

4. The method of claim 3 wherein a weekend trip is defined as a Thursday, Friday or Saturday departure and a Sunday, Monday or Tuesday return.

5. The method of claim 4 wherein the step of determining all pairs of departure dates and return dates comprises identifying all weekends that occur during the date interval, and pairing each possible departure date associated with each possible return date for the corresponding weekend for each weekend that occurs within the date interval.

6. The method of claim 5 wherein the date interval comprises a calendar month.

7. The method of claim 1 wherein the travel date information comprises a desired departure date, a desired return date, and at least one of a specified number of days preceding said desired departure date, a specified number of days following said departure date, a specified number of days preceding said desired return date, and a specified number of days following said desired return date.

8. The method of claim 7 wherein the step of determining all pairs of departure dates and return dates comprises:

identifying all possible departure dates based on the desired departure date and the specified number of acceptable days preceding the desired departure date and the number of acceptable travel days following said desired departure date;

identifying all possible return dates based on the desired return date and the specified number of acceptable travel days preceding the desired return date and the number of acceptable travel days following the desired return date; and

pairing each possible departure date with each possible return date.

9. The method of claim 1 wherein the travel date information comprises said user entered trip date interval and said user entered trip length.

11. The method of claim 9 wherein said user entered trip length is expressed as a numerical value or a numerical range setting forth the desired length of the trip in days.

12. The method of claim 9, wherein the step of identifying all pairs of departure dates and return dates comprises:

determining all possible departure dates and all possible return dates within the trip date interval that encompasses a trip of the received trip length; and

pairing each possible departure date with each possible return date.

13. A computer implemented method of searching for travel itineraries comprising the steps of:

simultaneously providing a plurality of flexible date search options to a user with a web server, one of the plurality of flexible date search options comprising performing a search based on a user entered trip date interval and a user entered trip length, the user entered trip date interval comprising a user entered departure date and a user entered return date, wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date;

receiving a search option selection from the user via a network;

requesting travel date information from the user based on the search option selection;

receiving the travel date information from the user via the network;

identifying one or more departure dates and one or more return dates based on the travel date information with an application server, where at least one of said one or more departure dates and said one or more return dates comprises more than one date;

identifying a plurality of date pairs with the application server, each date pair comprising one of said one or more departure dates and one of said one or more return dates;

searching for fares for itineraries corresponding to each date pair with a search engine; and

displaying said fares on a display.

14. The method of claim 13 wherein the step of identifying one or more departure dates and one or more return dates comprises identifying every weekend within a defined date range, and identifying at least one departure date and at least one return date for each weekend.

15. The method of claim 14 wherein identifying at least one departure date and at least one return date for each weekend comprises:

identifying at least one departure date corresponding to at least one of Thursday, Friday and Saturday for each weekend within said defined date range; and

identifying at least one return date corresponding to at least one of Sunday, Monday and Tuesday for each weekend within said defined date range.

16. The method of claim 14 wherein said defined date range is a calendar month.

17. The method of claim 13 wherein the step of identifying one or more departure dates and one or more return dates includes receiving a specified departure date and a range of days preceding and/or following said specified departure date.

18. The method of claim 13 wherein the step of identifying one or more departure dates and one or more return dates includes receiving a specified return date and a range of days preceding and/or following said specified return date.

19. The method of claim 13 wherein the step of identifying one or more departure dates and one or more return dates includes receiving a date range for a trip and receiving a specified trip length, wherein the one or more departure dates are identified as every departure date within said date range which can accommodate a trip of the specified trip length within said date range.

20. The method of claim 13 wherein the step of identifying one or more departure dates and one or more return dates includes receiving a date range and receiving a specified trip length, wherein the one or more return dates are identified as every return date within said date range which can accommodate a trip of the specified trip length within said date range.

29. A system for searching for and displaying travel itineraries and fares for flexible travel schedules, comprising:

means for receiving a flexible date search option selection from a user, the means comprising simultaneously providing a plurality of flexible date search options to the user, one of the plurality of flexible date search options comprising performing a search based on a user entered trip date interval and a user entered trip length, the user entered trip date interval comprising a user entered departure date and a user entered return date, wherein the user entered trip length is less than a period of time between the user entered departure date and the user entered return date;

means for receiving travel date information from the user, the means comprising requesting travel date information from the user based on the flexible date search option selection;

means for determining all pairs of departure dates and return dates that satisfy the travel date information; and

search means for identifying itineraries corresponding to said date pairs.

30. A computer implemented method of identifying a plurality of alternate travel itineraries, the method comprising the steps of:

receiving travel date information from the user via a network, the travel date information comprising a trip date range, the trip date range comprising a user specified earliest departure date and a user specified latest return date, and a trip length, wherein the trip length is less than the trip date range;

determining all pairs of departure dates and return dates that satisfy the travel date information with an application server;

identifying fares for itineraries corresponding to each of the departure date and return date pairs with a search engine; and

displaying the fares on a display.

32. The method of claim 30 wherein said trip length is expressed as a numerical value or a numerical range setting forth the desired length of the trip in days.

33. The method of claim 32, wherein the step of identifying all pairs of departure dates and return dates comprises:

determining all possible departure dates and all possible return dates within the trip date range that encompass a trip of the received trip length; and
pairing each possible departure date with each possible return date.

34. The method of claim 11 wherein, when said user entered trip length is expressed as a numerical range, said numerical range comprises a minimum period of time and a maximum period of time, and wherein the minimum period of time of the numerical range is less than said period of time between the user entered departure date and the user entered return date.

35. The method of claim 13 wherein said travel date information comprises said user entered trip date interval and said user entered trip length.

36. The method of claim 35 wherein said user entered trip length is expressed as a numerical value or a numerical range setting forth the desired length of the trip in days.

37. The method of claim 36 wherein, when said user entered trip length is expressed as a numerical range, said numerical range comprises a minimum period of time and a maximum period of time, and wherein the minimum period of time of the numerical range is less than said period of time between the user entered departure date and the user entered return date.

38. The system of claim 29 wherein said travel date information comprises said user entered trip date interval and said user entered trip length.

39. The system of claim 38 wherein said user entered trip length is expressed as a numerical value or a numerical range setting forth the desired length of the trip in days.

40. The system of claim 39 wherein, when said user entered trip length is expressed as a numerical range, said numerical range comprises a minimum period of time and a maximum period of time, and wherein the minimum period of time of the numerical range is less than said period of time between the user entered departure date and the user entered return date.

41. The method of claim 32 wherein, when said trip length is expressed as a numerical range, said numerical range comprises a minimum period of time and a maximum period of time, and wherein the minimum period of time of the numerical range is less than said trip date range.

IX. Evidence Appendix

- A. Transcript of Examiner Hayes' voicemail on October 8, 2008.

X. Related Proceedings Appendix

None.

In view of the remarks above, Appellant respectfully submits that claims 1-9, 11-20, 29, 30, and 32-41 are patentable over the references of record and are in condition for allowance. Therefore, Appellant respectfully requests reversal of the Examiner's rejections and issuance of a Notice of Allowance.

Respectfully submitted,

Dated: September 14, 2010

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APPENDIX A

Transcript of Examiner Hayes' voicemail on October 8, 2008

Message from (571-272-6708) Examiner John Hayes

Good morning, Mr. McGinley this is John Hayes over at the Patent and Trademark Office. I'm calling about Serial No. 10/687,366. We had an interview about a week or so ago and you had filed some proposed changes to some of the claims. I've taken a look at that and I think those changes probably get around the primary reference of Daughtry at least for the reason that the change is about the plurality of flexible date search option so that user 1 and then you specify what one of those options is. I think in Daughtry it only has basically one flexible date search option but only that one option no more than that. So I think at least for that reason it would get around the Daughtry reference. So if you want to go ahead and file those changes and get them to the Examiner so that she can get working on this case, I would recommend that. If you have any other questions, my number is 571-272-6708. Thank you. Bye, bye!